U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: NOV 0 8 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved. The approval was subsequently revoked by the Director, Nebraska Service Center (Director), on the ground that the evidence of record failed to establish that the beneficiary had the requisite experience to qualify for the proffered position under the terms of the labor certification. The revocation decision is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the approval of the petition reinstated.

The petitioner is an information systems consulting services business. Its Form I-140, Immigrant Petition for Alien Worker, was filed on July 13, 2007, seeking to permanently employ the beneficiary in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an Application for Alien Employment Certification, Form ETA 750, which had been filed with the Department of Labor (DOL) on March 23, 2005 and certified by the DOL on February 23, 2007. The Form I-140 petition was approved on February 4, 2008.

On March 21, 2012, the Director issued a Notice of Intent to Revoke (NOIR), advising the petitioner that one of the letters previously submitted as evidence of the beneficiary's qualifying work experience (during the time period of September 10, 2003 to June 30, 2004) would not be accepted because the company's owners pled guilty to a criminal charge of fraud and misrepresentation. Without that letter the record did not establish that the beneficiary had one year of experience in the job offered or a related occupation, as required on the Form ETA 750.

In response to the NOIR the petitioner submitted additional evidence of the beneficiary's employment by the subject company in the context of providing services at a client site. The documentation included letters from two individuals who claim to have been co-workers of the beneficiary at that client site, Forms W-2 (Wage and Tax Statements) issued to the beneficiary by the subject company for the years 2003 and 2004, a series of pay stubs issued by the subject company to the beneficiary in 2003 and 2004, and other materials. See 8 C.F.R. § 204.5(g)(1) (pertaining in part to evidence of work experience when a letter from a prior employer is unavailable).

On June 29, 2012, the Director issued his Revocation decision. Without addressing any of the documentation submitted in response to the NOIR, the Director determined that the work experience the beneficiary claimed with the company whose owners had been convicted of fraud would not be taken into consideration. The Director concluded, therefore, that the beneficiary did not have enough qualifying experience to meet the requirements of the labor certification.

The petitioner filed a proper and timely appeal. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the instant petition is March 23, 2005, which is

the date the underlying labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

Upon review of the entire record – in particular, the documentation submitted in response to the NOIR – the AAO concludes that the petitioner has established that the beneficiary more likely than not had all the experience specified on the ETA Form 9089 as of the priority date – March 23, 2005. Thus, there is no basis for the Revocation decision. Accordingly, the AAO will withdraw that decision and reinstate the approval of the petition.[1]

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The Revocation decision issued by the Director on June 29, 2012, is withdrawn. The approval of the petition is reinstated.

[1] The AAO notes that the beneficiary filed a Form I-485 (application to adjust status to legal permanent resident) on October 1, 2007, shortly after the filing of the Form I-140. Following the revocation of the approved Form I-140, the Form I-485 application was denied on August 29, 2012. As the revocation decision is now rescinded, it would be appropriate for the Director to reopen the Form I-485 proceedings.